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June 25, 1998

Magalie Roman Salas
Secretary
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Washington, D.C. 20554

**Re: Petition of the Association for Local Telecommunications
Services for Declaratory Ruling Regarding Section 706;
CC Docket No. 98-78**

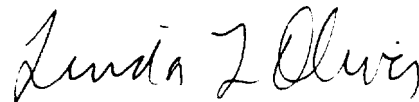
Dear Ms. Salas:

Attached for filing in the referenced docket, pursuant to the procedural order in this proceeding, DA 98-1019 (released June 3, 1998), on behalf of LCI International Telecom Corp. ("LCI"), are the original and 12 copies of LCI's reply comments.

We have also submitted under separate cover a diskette containing the reply comments to Janice Myles of the Common Carrier Bureau.

If you have any questions, please contact me.

Respectfully submitted,



Linda L. Oliver
Counsel for LCI International Telecom Corp.

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Petition of the Association for Local) CC Docket No. 98-78
Telecommunications Services for)
Declaratory Ruling Regarding Section 706)

REPLY COMMENTS OF LCI INTERNATIONAL TELECOM CORP.

LCI International Telecom Corp. ("LCI") 1/ hereby files its reply comments on the captioned Petition of the Association for Local Telecommunications Services ("ALTS") for a Declaratory Ruling, filed pursuant to Section 706 of the Telecommunications Act of 1996, 47 U.S.C. § 157 note, on May 27, 1998. 2/

INTRODUCTION AND SUMMARY

LCI strongly supports grant of the ALTS petition. If competitive local exchange carriers ("CLECs") do not have the ability to access xDSL technology in the incumbent local exchange ("ILEC") network, CLECs will, as practical matter, be limited in their ability to provide competing broadband telecommunications services to those geographic areas and those customers for which the economics justify duplicating the ILEC's investment. As the comments from the CLECs in this

1/ LCI is a subsidiary of Qwest Communications Corp.

2/ Public Notice (Corrected), DA 98-1019, CC Docket No. 98-78, released June 3, 1998.

docket demonstrate, the practical result of denying competitors access to ILEC xDSL capabilities is that most consumers will not have choices for providers of broadband telecommunications services.

LCI relied in its initial comments on a White Paper that LCI has prepared on Section 706 issues, entitled "CLEC Access to xDSL Technology: A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Services." ^{3/} That paper, which was attached to LCI's initial comments, anticipates and addresses many of the arguments made by the ILECs who oppose the ALTS petition. We therefore do not separately address most of the ILEC arguments in these reply comments, but rather refer the Commission to the White Paper for responses to the ILECs' arguments. The White Paper covers the following points in depth ^{4/}:

- CLEC access to xDSL technology is essential if consumers are to have a choice of broadband service providers.
- xDSL is simply a manifestation of the natural evolution of the network to higher speeds and greater digital capabilities.
- Regulators must preserve the three entry strategies created by Congress as the network evolves.
- There is no legal basis for fencing off access to ILEC xDSL capability.

^{3/} "CLEC Access to xDSL Technology: A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Services," LCI White Paper, June 1998 ("LCI White Paper") (Attachment A to initial comments of LCI).

^{4/} This list tracks the Table of Contents in the White Paper, making it simple to locate the responses to the various ILEC arguments made in opposition to the ALTS petition.

- xDSL electronics are an integral part of the subscriber loop.
- Competitors cannot cost-justify providing their own xDSL electronics and interoffice facilities on a broad basis.
- Access to xDSL capability by ILEC competitors will help ensure a competitive environment for Internet Service Providers (ISPs).
- Fencing off access to ILEC data networks will likely create a dominant LEC in both data and voice in the future.
- ILECs already have strong incentives to invest in broadband technology.

I. The ILECs' Arguments Rest on a False Premise: That Data and Voice Services and Facilities Are Different and Can be Treated Differently under the Act.

The ILECs all base their opposition to the ALTS petition on the false premise that the Act draws distinctions between data and voice telecommunications services and between circuit-switched and packet-switched local network technology. Put simply, nothing in the Act makes any such distinctions, and for good reasons. There are no separate voice and data networks, nor are there separate circuit-switched and packet-switched networks. Data can be provided over circuit-switched facilities and voice can be provided over packet-switched facilities, and both circuit and packet networks share many facilities in common. The ILECs' attempts to obtain deregulated treatment based on such false distinctions must fail, both as a matter of law and as a matter of technology. xDSL technology is simply the next step in the natural evolution of the network from analog to digital, from copper to fiber, and so on. It is not something separate.

As Chairman William E. Kennard recently observed, packet networks can be and are being used for voice traffic:

Circuit switches are giving way to packet switches. Instead of keeping an entire circuit open and dedicated to a single conversation for the length of the phone call, packet switching breaks the spoken words into tiny data packets that are disassembled, then transmitted separately over the most efficient routes possible, and then reassembled at the other end of the call in microseconds. The same technique can be used to handle other types of traffic such as data, image, and video. 5/

Intermedia makes a similar point:

[I]t is technically and practically impossible to distinguish between digital packet-switched networks and the services provided over them, and traditional circuit-switched networks and the services that they carry. In fact there are not two separate networks, and there never were. Rather, there is a single ILEC network that, like the networks constructed by CLECs across the country, is evolving in to a predominantly digital, packet-switched facility. 6/

Intermedia also notes that "along high-traffic routes, the majority of interoffice transmissions -- including those carrying "plain old telephone service" -- are now carried over packet-switched, digital facilities." 7/ In its White Paper, LCI also discusses this issue in detail.

5/ "A Broadband Vision for America," Remarks by Chairman William E. Kennard to Federal Communications Bar Association, June 24, 1998, FCC website version at 2.

6/ Comments of Intermedia at 2-3.

7/ Id. at 3.

The xDSL issue is not about whether the Commission should treat data services differently from voice. It is about whether competitors will have access to the incumbent LEC network as it evolves or whether, instead, they will be relegated to "horse-and-buggy" technology that simply will not allow them to compete with the ILECs' own provision of broadband telecommunications services. The Commission cannot and should not base its regulatory policies and its interpretation of the Communications Act on distinctions that do not exist in the real world (or in the Act).

II. There is No Such Thing as "Bottleneck" and "Non-bottleneck Local Exchange Facilities."

US West suggests that the network element provisions of Section 251(c)(3) of the Communications Act apply only to "bottleneck" facilities, which they define as facilities that cannot be duplicated by a competitor. ^{8/} Other ILECs make similar arguments. Nothing in the Act, in business reality, or in logic supports this argument.

First, every element in the incumbent LEC network can theoretically be duplicated. Even the loop, which US West describes as the only relevant bottleneck facility in connection with xDSL-based services, can be duplicated in

^{8/} US West Comments at 11, 17-21. It is ironic that US West makes this argument, since in its own forbearance petition it argued strenuously that it could not economically justify installing DLSAM and other xDSL equipment to serve its less densely populated central offices without being granted an effective monopoly to serve those customers. See Petition of US West, CC Docket No. 98-26, filed February 25, 1998, at 25-26, discussed in LCI White Paper at 18-19.

some instances by a competitor, if the economics are right. Carriers serving large business customers within a confined geographic area, for example, might find it economic to build a loop to that customer. Those same carriers might find it uneconomic to build a loop to residential customers or to business customers in a different area or with different characteristics.

The same type of analysis holds true for all the other network elements. Congress wisely provided for entry into the local telecommunications to serve customers no matter what the economics of building new facilities to serve those customers might be. The network element section of the Act permits competing carriers to decide for themselves which network elements they can justify constructing themselves, and which they must obtain from the incumbent LEC.

These legal requirements and policy considerations apply just as strongly to the xDSL capabilities of incumbent LEC networks as they do to any other local network capability. If competitors do not have access to the xDSL capabilities of the ILEC network, competition in broadband telecommunications services will be very limited. It will occur only in those geographic areas and customer segments where the economics justify installation and construction of facilities. As the LCI White Paper shows in detail, the cost of installing DLSAMs in every central office; the cost of collocation, interoffice transport, and local packet

switching; and the expenses of engineering and maintaining a duplicate local xDSL network are simply prohibitive in many if not most cases. 9/

US West itself argued in its Section 706 petition that without forbearance, it would not install xDSL capability to serve customers in its rural areas because the economics could not justify it. 10/ If those are the economics facing US West, which starts with nearly 100 percent of the customer base, then the economics for a new entrant would be much worse.

In sum, there is nothing in the Act -- nor should there be -- that attempts to decide what ILEC facilities are considered to be "bottleneck" or "essential" local facilities and which are not. Depending on the economics of serving a particular customer in a particular location, any local facility in an ILEC network may be necessary for competitive entry. The Commission cannot and should not prejudge that, whether for ILEC xDSL capabilities or any others.

III. Some of the ILECs Argue, Incorrectly, and for the First Time, that the Act Does Not Cover Advanced Technologies

As the LCI White Paper points out, the unbundling and resale provisions of the Act clearly apply to any technology used by incumbent local exchange carriers to provide telecommunications services. 11/ That is why, no

9/ White Paper at 18-31.

10/ See Petition of US West, CC Docket No. 98-26, filed February 25, 1998, at 25-26, discussed in LCI White Paper at 18-19.

11/ See 47 U.S.C. § 251(c)(3), 153(29), 251(c)(4). See also LCI White Paper at 12-18.

doubt, the four RBOCs who have filed petitions seeking deregulation of xDSL-based services have done so by seeking *forbearance* from the Act's requirements, rather than asking the Commission to declare that those requirements do not apply to xDSL technology.

In their comments opposing the ALTS petition, the ILECs appear to be divided. Many continue to argue just for forbearance, in apparent recognition of the fact that the Act clearly applies to xDSL technology and services. ^{12/} GTE and US West, however, take a different approach. These ILECs attempt to argue that the Act does not cover advanced technologies such as xDSL, in addition to restating their forbearance arguments. None of the arguments advanced to support exclusion of xDSL from Section 251(c) requirements have merit.

US West argues, for example, that because xDSL technology enables ILECs to provide high-speed data services, the ILECs are not engaged in providing "telephone exchange service" when they deploy xDSL in their networks, and that they therefore are not "incumbent local exchange carriers" to the extent they are using xDSL technology. They argue, from that already incorrect premise, that xDSL technology deployed in the ILEC network is not subject to the network unbundling provisions of Section 251(c)(3). They also argue that because xDSL technology can be used to provide broadband data telecommunications services that xDSL-based services are not subject to the resale provisions of Section 251(c)(4). ^{13/}

^{12/} See, e.g., Comments of SBC, Bell Atlantic, and BellSouth.

^{13/} GTE also makes the argument that xDSL services are "exchange access" services, and thus not subject to the Section 251(c)(4) resale requirements. Comments

First, "telephone exchange service" does not have the narrow meaning that the ILECs ascribe to it -- presumably, the ILECs believe that this term is limited to circuit-switched voice service, even though nothing in the definition of telephone exchange service includes such a limitation. ^{14/} On the contrary, the definition of "telephone exchange service," like the other relevant provisions of the Act, refers to the ability of a subscriber to "originate and terminate a *telecommunications service*." ^{15/}

Second, neither Section 251(c)(3) nor Section 251(c)(4) speaks in terms of "telephone exchange service." Instead, those sections (and the definition of "network element" in Section 153(29)) speak in terms of "telecommunications services." ^{16/} The ILECs do not suggest that xDSL-based services are not "telecommunications services." Whether an ILEC uses a particular local network capability to provide "telephone exchange service" as defined by the Act or to provide other telecommunications services is not relevant to the question whether competitors have a right to use those network capabilities themselves to provide

of GTE at 15. Interestingly, US West makes the opposite point -- that xDSL services are *not* "exchange access" services. However one might classify a particular ILECs' xDSL-based offerings, it does not change the fact that the underlying network capability is subject to the Act's Section 251(c)(3) unbundling requirements, and that the services provided to end users are subject to resale under Section 251(c)(4).

^{14/} 47 U.S.C. 153(26)§ (definition of "telephone exchange service").

^{15/} *Id.* (emphasis added).

^{16/} 47 U.S.C. § 251(c)(3), 251(c)(4), 153(29).

competing telecommunications services or to resell those telecommunications services pursuant to Section 251(c).

Third, even if it were relevant whether ILECs use xDSL equipment to provide "telephone exchange service" (however that term is defined), it is not accurate to contend that the ILECs do not or could not provide "telephone exchange service" over xDSL facilities. For example, an xDSL-equipped loop has electronics attached to either end of the copper loop. The voice calls -- which under anyone's definition would be considered "telephone exchange service" -- would pass through the xDSL electronics at both ends, emerging from the DSLAM at the central office and either proceeding to the circuit switch or, if the ILEC chooses to provide voice service via packet-switching technology, to the packet switch. 17/ More fundamentally, as discussed above in Section I, there are not two separate local networks -- one for voice and one for data, or one circuit-switched and one packet-switched. 18/

GTE also argues that ILECs are not required to provide access to xDSL-equipped loops as network elements. 19/ GTE's argument flies squarely in the face of the definition of network element under the Act, 47 U.S.C. § 153(29). LCI fully addresses this argument in its White Paper. 20/

17/ See Section I, supra.

18/ See Section I, supra; White Paper at 33-35.

19/ GTE Comments at 9-11.

20/ White Paper at 7-18.

In sum, the ILECs have not mounted a serious case for a Commission ruling that the unbundling and resale provisions of the Act do not apply to xDSL technology. Presumably that is why the RBOCs sought *forbearance* in the first place, and why most continue to rely on that argument alone. 21/

IV. The ILECs Ignore the Digital Loop Carrier Problem.

The ILECs opposing the ALTS petition completely ignore the competitive problems presented by the increasing deployment by ILECs of digital loop carrier ("DLC") technology (already used to serve upwards of 20 percent of subscriber lines nationwide). LCI discussed this point in its initial comments and in the White Paper. 22/ Briefly, the ILECs would deny competitors the ability to access the shorter copper loops that end at remote DLCs, thus denying competitors the practical ability to provide comparable quality broadband telecommunications services (because the ability to deploy xDSL technology at all is dependent on the length of the loop, and the potential bandwidth increase with a shorter loop length).

The ILECs' complete failure to confront and address this problem only underscores the weakness of the ILECs' assertion that competition in broadband services will flourish without access to ILEC xDSL capabilities.

21/ We do not address the forbearance arguments here, and instead refer the Commission to LCI's White Paper and to LCI's comments in opposition to the RBOC forbearance petitions. See White Paper at 10-12; Comments of LCI in CC Docket Nos. 98-11, 98-26, and 98-32 (filed April 6, 1998); Reply Comments (filed May 6, 1998); Comments of LCI in CC Docket No. 98 91 (filed June 25, 1998).

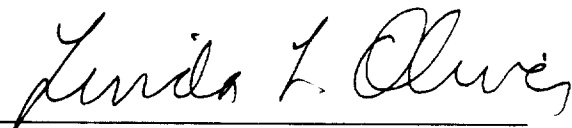
22/ See Initial Comments of LCI at 7-8; LCI White Paper at 15-17, 27.

Conclusion

For the reasons given above, in its initial comments, and in the LCI White Paper, the Commission should reject the ILECs' attacks and grant the ALTS petition in its entirety. Unless CLECs have access, pursuant to Section 251(c) of the Act, to the ILEC network as it evolves, most consumers will be deprived of the ability to have choices of broadband telecommunications service providers.

Respectfully submitted,

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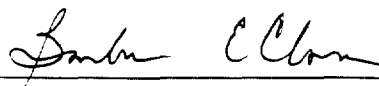
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June 25, 1998

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CERTIFICATE OF SERVICE

I, Barbara E. Clocker, hereby certify that on this 25th day of June, 1998, a copy of the Reply Comments of LCI International Telecom Corp. filed in CC Docket No. 98-78 was hand delivered or sent by first class mail (where indicated) to the parties listed below.



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